

**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**MARC DOUGLAS DEA, OD
15600 Washington Ave.
San Lorenzo, CA 94580
Optometrist License No. 11124**

Respondent.

Case No. CC-2008-213

OAH No. 2010070970

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 17, 2011.

It is so ORDERED January 12, 2011.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC-2008-213

11 **MARC DOUGLAS DEA, OD**
12 **15600 Washington Ave.**
13 **San Lorenzo, CA 94580**

OAH No. 2010070970

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 **Optometrist License No. 11124**

15 Respondent.

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the State Board of Optometry of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation.

22 **PARTIES**

23 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
24 Optometry. She brought this action solely in her official capacity and is represented in this matter
25 by Edmund G. Brown Jr., Attorney General of the State of California, by Char Sachson, Deputy
26 Attorney General.

2. Respondent Marc Douglas Dea, OD (Respondent) is represented in this proceeding by attorney Daniel J. Meagher, Esq., whose address is: 1 Sansome Street, Suite 1400 San Francisco, CA 94104

3. On or about July 28, 1999, the State Board of Optometry issued Optometrist License No. 11124 to Marc Douglas Dea, OD (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No. CC-2008-213 and will expire on August 31, 2011, unless renewed.

JURISDICTION

4. Accusation No. CC-2008-213 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 5, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. CC-2008-213 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. CC-2008-213. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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14. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 11124 issued to Respondent Marc Douglas Dea, OD (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

2. **Cooperate with Probation Surveillance.** Respondent shall comply with the board's probation surveillance program; including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.

3. **Tolling of Probation If Respondent Moves Out-of-State.** The period of probation shall not run during the time Respondent is residing or practicing outside the jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of California to reside or practice elsewhere, Respondent is required to immediately notify the board in writing of the date of departure, and the date of return, if any.

4. **Completion of Probation.** Upon successful completion of probation, Respondent's certificate will be fully restored.

1 5. **Violation of Probation.** If Respondent violates probation in any respect, the board,
2 after giving Respondent notice and opportunity to be heard, may revoke probation and carry out
3 the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed
4 against Respondent during probation, the board shall have continuing jurisdiction until the matter
5 is final, and the period of probation shall be extended until the matter is final.

6 6. **Education Course.** Within 90 days of the effective date of this decision, Respondent
7 shall submit to the board for its prior approval an educational program or course to be designated
8 by the board, in the areas of practice management, retinal disease and evaluation of retinal
9 disease. The education program shall consist of a minimum of four (4) hours for each practice
10 area. This program shall be in addition to the Continuing Optometric Education requirements for
11 re-licensure, and shall be obtained with all costs being paid by Respondent. Following the
12 completion of each course, the board or its designee may administer an examination to test
13 Respondent's knowledge of the course. Respondent shall provide written proof of attendance in
14 such course or courses as are approved by the board.

15 7. **Reexamination.** Within 60 days of the effective date of this decision, or within some
16 other time as prescribed in writing by the board, Respondent shall take and the California Laws
17 and Regulations Examination. If Respondent fails this examination, Respondent must take and
18 pass a re-examination as approved by the board. The waiting period between repeat examinations
19 shall be at six month intervals until success is achieved. The Respondent shall pay the cost of any
20 such examination.

21 8. **Costs.** Respondent shall pay to the Board a sum not to exceed the costs of the
22 investigation and prosecution of the case. That sum shall be \$5042.00 and shall be paid in full
23 directly to the Board, in a lump sum, due no later than 90 days from the effective date of the
24 Decision. Cost recovery will not be tolled.

25
26 If Respondent is unable to submit costs timely, he shall be required instead to submit an
27 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will
28 be able to submit the costs, including payment amount(s). Supporting documentation and

1 evidence of why the Respondent is unable to make such payment(s) must accompany this
2 submission.

3 Respondent understands that failure to submit costs timely is a violation of probation and
4 submission of evidence demonstrating financial hardship does not preclude the Board from
5 pursuing further disciplinary action. However, Respondent understands that providing evidence
6 and supporting documentation of financial hardship may delay further disciplinary action.

7 Consideration to financial hardship will not be given should Respondent violate this term
8 and condition, unless an unexpected AND unavoidable hardship is established from the date of
9 this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not
10 relieve the Respondent of his responsibility to reimburse the Board for these costs.

11
12 9. **Monitoring.** Within 30 days of the effective date of this decision, Respondent shall
13 submit to the board for its prior approval a plan of practice in which Respondent's practice shall
14 be monitored by another optometrist, who shall provide periodic reports to the board. Any cost
15 for such monitoring shall be paid by Respondent. If the monitor resigns or is no longer available,
16 Respondent shall, within 15 days, move to have a new monitor appointed, through nomination by
17 Respondent and approval by the Board.
18

19
20 ACCEPTANCE

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Daniel J. Meagher, Esq.. I understand the stipulation and the effect
23 it will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary
24 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order

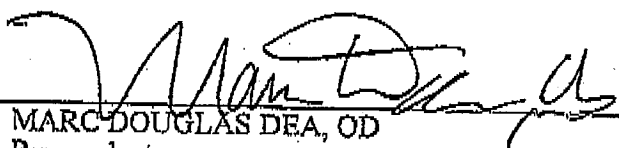
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1 of the State Board of Optometry.

2
3 DATED: 10/22/10.


4 MARC DOUGLAS DEA, OD
Respondent

5 I have read and fully discussed with Respondent Marc Douglas Dea, OD the terms and
6 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
7 I approve its form and content.

8 DATED: 10-22-10


9 Daniel J. Meagher, Esq.
Attorney for Respondent


10
11 ENDORSEMENT

12 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
13 submitted for consideration by the State Board of Optometry of the Department of Consumer
14 Affairs.

15
16 Dated: 10/22/10

Respectfully Submitted,

17 EDMUND G. BROWN JR.
Attorney General of California
18 FRANK H. PACOE
Supervising Deputy Attorney General


20 CHAR SACHSON
21 Deputy Attorney General
22 Attorneys for Complainant

23 SF2010200370
24 Stipulation.rtf

Exhibit A

Accusation No. CC-2008-213

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Attorney General of California
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Attorneys for Complainant

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. CC-2008-213

12 **MARC DOUGLAS DEA, OD**
13 **15600 Washington Ave.**
San Lorenzo, CA 94580

ACCUSATION

14 **Optometrist License No. 11124**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

22 2. On or about July 28, 1999, the State Board of Optometry issued Optometrist License
23 Number 11124 to Marc Douglas Dea, OD (Respondent). The Optometrist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on August 31,
25 2011, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3110 of the Code states:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

"(d) Incompetence.

...

"(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

...

"(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

"(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

"(2) As required by subdivision (c) of Section 3041."

5. Section 3041.1 of the Code states: "With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease

1 shall be held to the same standard of care to which physicians and surgeons and osteopathic
2 physicians and surgeons are held."

3 6. Section 118, subdivision (b), of the Code provides that the expiration of a license
4 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
5 within which the license may be renewed, restored, reissued or reinstated.

6 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 FACTUAL BACKGROUND

11 8. On or about November 12, 2008, Patient J.K.¹ presented to Respondent reporting
12 blurring, flashes and distortion in his right eye, possibly due to a sports injury where he was hit on
13 the side of his face. Respondent dilated J.K.'s right eye, and concluded that J.K. was suffering
14 from mild inflammation of the right eye, with no signs or symptoms of retinal detachment.
15 Respondent reached a differential diagnosis of superficial inflammation and central serous
16 retinopathy² (C.S.R.). Respondent advised J.K. to return to his office in one week for a re-check.

17 9. J.K. returned to Respondent's office on November 19, 2008. J.K. reported increased
18 stress, and that his eye had not improved or gotten worse. Respondent again diagnosed C.S.R.
19 and advised J.K. to return for a re-check in two months.

20 10. On January 14, 2009, J.K. returned to Respondent's office and reported a worsening
21 of the right eye. Respondent referred J.K. to an ophthalmologist. On January 19, 2009, J.K.'s
22 ophthalmologist diagnosed chronic retinal detachment³ of the right eye with subretinal fluid. On

23 ¹ Initials are used herein to protect the patient's privacy. The patient's identity will be
24 provided pursuant to a proper request for discovery.

25 ² Central serous retinopathy is a condition in which fluid builds up under the retina. It
usually occurs in young males, and typically resolves on its own in several months.

26 ³ Retinal detachment is a medical emergency that happens when a break occurs in the
27 neurosensory retina and allows fluid from the vitreous cavity to separate the neurosensory retina
28 from underlying retinal pigment epithelium. Diagnosis and treatment of retinal detachments are
time-sensitive. A delay in diagnosis and treatment typically results in a poorer visual outcome.

1 January 26, 2009, J.K. underwent surgery to repair the retinal detachment. J.K. suffered a
2 profound loss of vision in his right eye.

3
4 FIRST CAUSE FOR DISCIPLINE

5 (GROSS NEGLIGENCE)

6 11. Respondent is subject to disciplinary action under sections 3110(b) and 3041.1 in that
7 he was grossly negligent on November 12, 2008, when he relied upon an incorrect and
8 presumptive diagnosis of C.S.R. and failed to refer J.K. to an ophthalmologist.

9 12. Respondent is subject to disciplinary action under sections 3110(b) and 3041.1 in that
10 he was grossly negligent on November 19, 2008, when he relied upon an incorrect and
11 presumptive diagnosis of C.S.R. and failed to refer J.K. to an ophthalmologist.

12
13 SECOND CAUSE FOR DISCIPLINE

14 (INCOMPETENCE)

15 13. Respondent is subject to disciplinary action under sections 3110(d) and 3041.1 in that
16 he was incompetent on November 12, 2008, when he relied upon an incorrect and presumptive
17 diagnosis of C.S.R. and failed to refer J.K. to an ophthalmologist.

18 14. Respondent is subject to disciplinary action under sections 3110(d) and 3041.1 in that
19 he was incompetent on November 19, 2008, when he relied upon an incorrect and presumptive
20 diagnosis of C.S.R. and failed to refer J.K. to an ophthalmologist.

21
22 THIRD CAUSE FOR DISCIPLINE

23 (FAILURE TO REFER TO APPROPRIATE PHYSICIAN)

24 15. Respondent is subject to disciplinary action under sections 3110(y) and 3041.1 in that
25 he failed to refer J.K. to an appropriate physician on November 12, 2008, when he relied upon an
26 incorrect and presumptive diagnosis of C.S.R. and failed to refer J.K. to an ophthalmologist.

1 16. Respondent is subject to disciplinary action under sections 3110(y) and 3041.1 in that
2 he failed to refer J.K. to an appropriate physician on November 19, 2008, when he relied upon an
3 incorrect and presumptive diagnosis of C.S.R. and failed to refer J.K. to an ophthalmologist.
4

5 FOURTH CAUSE FOR DISCIPLINE
6 (FAILURE TO MAINTAIN ADEQUATE RECORDS)

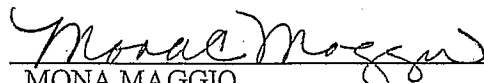
7 17. Respondent is subject to disciplinary action under section 3110(q) in that he failed to
8 adequately document positive findings and clinical observations using descriptive terms that
9 describe location, size, quality, color, severity and other pertinent physical attributes.
10

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the State Board of Optometry issue a decision:

- 14 1. Revoking or suspending Optometrist License Number 11124, issued to Marc Douglas
15 Dea, OD.
16 2. Ordering Marc Douglas Dea to pay the State Board of Optometry the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3.
19 3. Taking such other and further action as deemed necessary and proper.
20
21

22 DATED: April 28, 2010


23 MONA MAGGIO
24 Executive Officer
25 State Board of Optometry
26 Department of Consumer Affairs
27 State of California
28 Complainant

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